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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x  
3 UNITED STATES OF AMERICA

4 v.

11 CR 605 (RJS)  
Sentence

5 RANDY WASHINGTON

6 Defendant

-----x

7 New York, N.Y.  
8 December 18, 2014  
9 4:45 p.m.

10 Before:

11 HON. RICHARD J. SULLIVAN  
District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the  
Southern District of New York

15 CHRISTOPHER DiMASE

16 TELEMACHUS P. KASULIS

Assistant United States Attorney

17 DAVID A. GORDON

Attorney for Defendant Washington

18 IRA LONDON

19 Attorney for Defendant Washington

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(In open court; case called)

MR. KASULIS: Good afternoon, your Honor. Tim Kasulis and Chris DiMase for the government.

THE COURT: Good afternoon to each of you.  
For the defendant?

MR. GORDON: David Gordon for Mr. Washing. Good afternoon.

MR. LONDON: Ira London for the defendant.

THE COURT: Yes, Mr. Gordon, Mr. London and Mr. Washington, good afternoon to all of you.

I apologize for keeping you waiting, I was told that Mr. DiMase and Mr. Gordon were detained in front of another Judge. So I started something and then I had to finish it. So my apologies to you.

We are here for a sentencing. The last time we were here we all said a lot, but the upshot was that the government and Mr. Washington were each going to consider different options going forward in light of the topics that we'd been discussing for some time. So I got a notification from Mr. Kasulis, from the government indicating what their plans were. Why don't you tell me, Mr. Kasulis, what is on tap today.

MR. KASULIS: Yes, your Honor. We discussed the matter internally. At this time the government is prepared to hand to the Court the nolle prosequi, which would dismiss Count

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1 Five against Mr. Washington. We have made the internal  
2 decision that Mr. Washington will not be required to enter into  
3 any sentencing agreement as consideration for the government's  
4 dismissing of its count. So if the Court is ready to receive  
5 it, we are ready to pass this up.

6 THE COURT: OK. I think that's fine. Mr. Gordon or  
7 Mr. London, do you have anything to say in response to that? I  
8 assume no objection, right?

9 MR. GORDON: That's correct. I guess "thank you"  
10 would be appropriate.

11 THE COURT: Perhaps. It certainly is a gratuitous  
12 move by the government that I think speaks well of it and  
13 suggests that they take their role very seriously and recognize  
14 that in certain extreme circumstances it's necessary to do  
15 unusual things, and this is unusual, but I think it is  
16 appropriate. I'm grateful for the government taking the time  
17 that was necessary to get to this point. So thank you,  
18 Mr. Kasulis and Mr. DiMase, and also to those in your office  
19 because this is not a decision made in a vacuum, and it  
20 includes, I'm sure, Mr. Bharara whose signature is on here,  
21 though it might be somebody ghosting for him, but I'm sure he  
22 was involved, as were others. So I'm certainly appreciative of  
23 it. So my thanks, and also on behalf of Mr. Gordon and  
24 Mr. Washington does the same. There is a lot that remains to  
25 be said today, but we will talk about it, and I am prepared to

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1 sign the order dismissing the second 924(c) count.

2 Is it Mr. DiMase or Mr. Kasulis?

3 MR. KASULIS: That's my scrawling, your Honor.

4 THE COURT: I don't think you put the date on there.

5 MR. KASULIS: I'm happy to date it if your Honor would  
6 like.

7 THE COURT: I'm happy to let you do it rather than me.

8 This has the effect of reducing the mandatory sentence  
9 from 50 years to 25 years. It doesn't alter the maximum  
10 sentence which is still life -- I guess it's life plus five --  
11 but it certainly does alter the mandatory sentence which is  
12 considerable.

13 Anything else we should talk about before we move then  
14 into sentencing?

15 MR. KASULIS: Not from the government.

16 MR. GORDON: No, your Honor.

17 MR. LONDON: No, your Honor.

18 THE COURT: Let me review with the parties what I have  
19 received and reviewed in connection with sentencing. If I have  
20 left anything out, let me know, of course.

21 This is a case in which the verdict was returned by  
22 the jury on all eight counts back more than two years ago. The  
23 verdict was March 20, 2012. In the interim, there have been a  
24 lot of motions, changes of counsel, and a variety of  
25 back-and-forth that have prolonged sentencing quite an

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1 unusually long period of time.

2 I have reviewed, in addition to the trial transcript,  
3 which I presided over, the presentence report prepared by the  
4 probation department. It's dated July 6, 2012. It is a  
5 33-page, single-spaced submission that also includes a  
6 recommendation. I have reviewed the sentencing memorandum  
7 prepared by Mr. Freeman and Mr. Strazza. Mr. Freeman has been  
8 here for most of these, but he is not here today. Maybe he's  
9 tied up or the time has changed and so he doesn't know.

10 In any event, I reviewed that sentencing memorandum  
11 dated August 9, 2012. It's a five-page, double-spaced  
12 submission.

13 I also reviewed the forensic psychological evaluation  
14 prepared by Sanford Drob, which is dated October 30, 2012.  
15 It's a nine-page, single-spaced report.

16 I reviewed the sentencing memorandum of the government  
17 dated July 13 of 2012. That report is seven pages,  
18 double-spaced.

19 I have reviewed then the affirmation of Mr. Gordon in  
20 connection with his motion or Mr. Washington's motion to  
21 require the government to re-offer its plea which was pretrial,  
22 or, in the alternative, to set aside the verdict. I've already  
23 ruled on that motion, but I reviewed the affirmation.

24 More relevant to sentencing, I reviewed the  
25 attachments which include, among other things, Dr. Drob's

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1 report; also a report from New York Epilepsy and Neurology,  
2 PLLC. That is a report that is from William Barr. It's seven  
3 pages, single-spaced. It was an exhibit to Mr. Gordon's  
4 submission. I've reviewed all the attachments to that  
5 submission.

6 So I will just be clear, and rather than try to  
7 characterize them, they are all in the record.

8 I reviewed again my decision of my ruling on the  
9 motions. I've also reviewed the transcripts of the proceedings  
10 we had post trial previous to today just to remind myself of  
11 what was discussed. Then I reviewed again the trial testimony  
12 related to the statements of the testimony of victims,  
13 individuals who were robbed during the course of the various  
14 counts of the indictment. I think it was important to review  
15 those again. I think I have a -- I don't really have victim  
16 witness statements from any of the victims though, I have  
17 testimony from multiple victims, and there is a reference to a  
18 victim statement in the government's submission and also in the  
19 presentence report.

20 MR. KASULIS: I can tell you, your Honor, that I think  
21 the victim statement referenced in our submission is based on  
22 the one in the presentence report. I believe it's Mr. Cyrus.  
23 We have made efforts to contact the victims in this case, but  
24 the ones that testified and the ones who did not at several  
25 points during the sentencing litigation as we thought it might

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1 be time for them to speak to the Court if they wanted to. No  
2 one has expressed any interest in doing so.

3 THE COURT: In essence, they did speak to the Court.  
4 Some of them at least testified at trial and their testimony  
5 was quite graphic and moving.

6 So I reviewed it again, but I was here for it so I  
7 certainly reviewed that testimony.

8 Is there anything else I overlooked that should be  
9 before the Court?

10 MR. KASULIS: Nothing we're aware of, your Honor.

11 THE COURT: Mr. Gordon.

12 MR. GORDON: No, your Honor.

13 THE COURT: Let's proceed then with the presentence  
14 report. Mr. Washington, there are a number of factors that a  
15 judge has to consider in imposing a sentence. Among those  
16 factors is something called the United States Sentencing  
17 Guidelines, which I think you are probably familiar with. It's  
18 this book which is put out by a Commission and it's designed to  
19 help judges like me determine an appropriate sentence. So that  
20 is one factor. There are other factors that I am required to  
21 consider as well, including the personal history of the  
22 defendant.

23 I also have to consider the facts and circumstances of  
24 the crimes involved. I have to make sure that the sentence I  
25 impose reflects the seriousness of the crimes; that it promotes

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1 respect for the law; and that it provides a just punishment for  
2 the crimes.

3 I have to consider the need to deter or discourage you  
4 and others to commit crimes like this, so the hope is that the  
5 sentence I impose will have the effect of discouraging future  
6 criminal conduct by you and perhaps others who will learn about  
7 what happened in your case.

8 I have to consider your needs while in custody. So to  
9 the extent you have medical treatment needs, mental health  
10 treatment needs, substance abuse treatment needs, the needs for  
11 job training or educational opportunities, those are all things  
12 that a court should consider.

13 I have to also consider the need to avoid what is  
14 referred to as unwarranted disparities between the sentence I  
15 impose here and the sentences imposed by other judges on other  
16 defendants who are charged with similar crimes who have similar  
17 criminal histories. The basic point is that the sentence I  
18 impose in this case shouldn't be totally out of line with the  
19 sentences imposed on other people who have engaged in similar  
20 crimes with similar histories.

21 To the extent there were wide differences between what  
22 judges did in cases that were similar, it might promote  
23 disrespect for the law. It might make people question whether  
24 the system was arbitrary. So judges should consider that as  
25 well.



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1           My job is to balance all of these factors in reaching  
2 a sentence that is appropriate in light of the different  
3 factors recognizing that some factors argue in favor of a  
4 lengthy, harsh sentence, and others perhaps lean towards  
5 leniency; they argue for leniency. My job is to balance these  
6 things.

7           The way we are going to proceed is I am going to first  
8 begin with the presentence report to see if there are any  
9 objections to it. To the extent there are, I will resolve  
10 those. Then we will move on to the Sentencing Guidelines and  
11 how they apply in this case.

12           Mr. Gordon, are there any objections to what's in the  
13 presentence report? Obviously, this was a trial.  
14 Mr. Washington may disagree with the jury's verdict, but are  
15 there changes in the presentence report that you would like to  
16 articulate at this time and have the Court rule on?

17           MR. GORDON: Your Honor, I think the parties are in  
18 agreement that the guideline calculation has to be changed  
19 somewhat.

20           THE COURT: We will get there in a minute. The drug  
21 guideline has changed.

22           MR. GORDON: Other than that, no, your Honor.

23           THE COURT: Mr. Kasulis, is there any objection to  
24 what is in the presentence report from the government?

25           MR. KASULIS: Only, I guess, your Honor, to the extent

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1 that the presentence report conveys that Mr. Washington has  
2 been convicted of Count Five which was now dismissed. I don't  
3 know if you want to change that, your Honor, but Count Five  
4 comes up in a number of places.

5 THE COURT: I will make a note here certainly in the  
6 judgment that Count Five -- is it Count Five or --

7 MR. KASULIS: I believe it is Count Five.

8 THE COURT: Which is the second 924(c)?

9 MR. KASULIS: I believe it is Count Five, your Honor.

10 MR. GORDON: It's 6.

11 THE COURT: I think it's 6, right? I could be wrong.

12 MR. KASULIS: I think we moved to dismiss Count Five.

13 THE COURT: You moved to dismiss Five or Six?

14 MR. GORDON: I believe it's Six.

15 THE COURT: I have the nolle here. Count Five is  
16 the -- Count Six is the one we're keeping. It doesn't matter  
17 which one.

18 MR. KASULIS: That's correct, your Honor.

19 THE COURT: So Count Five is out. Count Six is in.

20 That will be reflected in the --

21 MR. GORDON: Well, your Honor, in which case the  
22 presentence report has the wrong punishment. It says that  
23 Count Five punishment was seven years and Count Six the  
24 punishment was 25. So that has to be changed.

25 THE COURT: Count Five is now out, and the punishment

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1 for Six is the mandatory consecutive five years.

2 MR. GORDON: So paragraph 121 has to be changed to 5  
3 years. Paragraph 141 was dismissed and has to be taken out.

4 THE COURT: Clearly. I guess one other thing that  
5 should be reflected is that Mr. Bent, who was a co-conspirator  
6 and also a cooperator who testified at the trial, has been  
7 sentenced in the interim. He was sentenced to 60 months, I  
8 believe.

9 Let's then talk about the guidelines and how they  
10 apply here. The presentence report begins at page 10 for the  
11 guidelines calculation. Because of the nature of most of these  
12 counts -- the robbery counts are Counts One through Four, and  
13 robberies are treated separately under the guidelines. Each  
14 one counts as its own group. The narcotics offense also counts  
15 as a separate group, as does Count Eight, the illegal firearms  
16 trafficking. Count Six, which is the 924(c) count, doesn't  
17 factor into the guideline analysis.

18 We will take these robberies in turn. The October 11,  
19 2008 robbery is a base offense level of 20. I would have  
20 thought there would be a two-level enhancement for restraint of  
21 victims. It is not reflected in the presentence report. I  
22 don't think it would ultimately make a difference

23 MR. GORDON: Which paragraph, your Honor?

24 THE COURT: I am at the October 11 robbery which  
25 begins on page 10 at paragraph 37. It would seem to me that

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1 there ought to be an additional enhancement under 2B3.1(a)(4),  
2 I think (B) for restraint of victim. Again, I don't think it  
3 ultimately makes a difference in terms of the guidelines  
4 calculation, but I want to be accurate. Wasn't that a robbery  
5 in which victims were restrained?

6 MR. KASULIS: They were definitely held against the  
7 wall and the floor, your Honor. That is the Magic Pot robbery.  
8 I don't recall whether they -- I am pretty sure they did not  
9 use any restraining devices, ropes, handcuffs, zip ties.  
10 Perhaps your Honor already has as to whether physical restraint  
11 alone is enough to trigger that enhancement.

12 THE COURT: I would think it is, but --

13 MR. KASULIS: The problem, I guess, is because robbery  
14 by its very nature involves either force or the threat of the  
15 use of force, some kind of physical restraint might be implied  
16 in every robbery, which obviously cannot be the case.

17 THE COURT: Physically restrained to facilitate  
18 commission of the offense.

19 MR. KASULIS: If you look at the last part, it says  
20 the guideline provides enhancement for robberies where victims  
21 forced to accompany the defendants to another location, which  
22 did not happen, or was physically restrained by being tied,  
23 bound or locked up.

24 THE COURT: You're referring to?

25 MR. KASULIS: I guess the commentary note 6 under

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1 background, 2B3.1. It is literally the last sentence of the  
2 commentary.

3 THE COURT: Tied, bound or locked up. So people were  
4 forced under the bar in this case. This is the Magic Pot  
5 robbery.

6 MR. KASULIS: My memory is the Magic Pot, your Honor.

7 THE COURT: I won't add it. It doesn't make a  
8 difference under the guidelines. It is certainly a relevant  
9 factor in sentencing but not under the guidelines. A base  
10 offense of 20 and no enhancements for that one. For the  
11 924(c), that is out.

12 MR. KASULIS: No, the gun is in for that one.

13 THE COURT: Count Five, was the gun count associated  
14 with the Magic Pot?

15 MR. KASULIS: No. I believe Count Five is the gun  
16 count associated with the August 18, 2010 robbery which is  
17 labeled group three, but is in fact group two which is somewhat  
18 confusing.

19 THE COURT: There is an enhancement for the October 11  
20 for a gun or no?

21 MR. KASULIS: For the October 11, no. Because he was  
22 in fact convicted of the 924(c).

23 THE COURT: That is Count Six.

24 MR. KASULIS: Correct, your Honor.

25 THE COURT: Count six is associated with the

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1 October 11 robbery.

2 MR. KASULIS: That's correct, your Honor.

3 THE COURT: That is still the case. I want to make  
4 sure it depends which one is out.

5 The October 12, 2010 robbery is also base offense 20.  
6 There is no 924(c) with this count. So that is a plus six  
7 because the firearm was used to pistol whip a victim.

8 MR. GORDON: What date did you say?

9 THE COURT: October -- excuse me -- August 12, 2010.

10 MR. GORDON: You said October.

11 THE COURT: Did I? Sorry.

12 MR. KASULIS: I should just clarify something, your  
13 Honor, before we move on. In group one, the October 11, 2008  
14 robbery is actually Count Three according to the PSR which I've  
15 got here. If you look at paragraph four, Count Three is  
16 October 11, 2008 which probation has labeled group one because  
17 they are doing it in chronological order.

18 THE COURT: Yes. Since we've now dropped one of the  
19 924(c)'s, I want to make sure I haven't missed which  
20 substantive robbery count or robbery group no longer has a  
21 924(c), in which case it should get two levels for a gun.

22 MR. KASULIS: That's group three, your Honor.

23 THE COURT: We're coming there. August 12, base  
24 offense 20 plus six for use of a firearm to pistol whip someone  
25 plus two because this is a case where the victim was in fact

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1 tied up. That takes us then to level 28.

2 Group three is the August 18, 2010 robbery. That is a  
3 base offense level of 20.

4 MR. DiMASE: Judge, I'm sorry. I think you may have  
5 misspoke on the August 12 robbery. Two levels were added  
6 because of physical injury to the victim, not restraint.

7 THE COURT: I'm sorry, you're right.

8 MR. DiMASE: I believe the testimony was that in the  
9 course of that robbery, the elderly gentleman who lived in the  
10 Bronx Park South apartment building was pistol whipped by  
11 Mr. Washington and sustained injury. Again, I don't believe  
12 there was any testimony of restraint.

13 THE COURT: I misspoke. Yes. I was thinking of  
14 another robbery.

15 August 18, 2010 is a base offense level of 20. This  
16 one now should have an enhancement for a firearm. How much of  
17 an enhancement?

18 MR. KASULIS: I believe, your Honor, it should be a  
19 five-level enhancement because the gun was brandished.

20 THE COURT: Mr. Gordon, do you agree with that?

21 MR. GORDON: Yes, sir.

22 THE COURT: This is one where the victims were  
23 physically restrained, so two levels are added to that. Then  
24 this is also a one-level enhancement because the robbery  
25 involved the theft of drugs. So this then should be adjusted

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1 to level 28, correct?

2 MR. KASULIS: Yes, your Honor.

3 THE COURT: Then we have group four, which is the  
4 narcotics count. Here I will change the calculation under  
5 paragraph 58 because the guidelines have since changed.

6 Mr. Washington, just so it's clear, this book is  
7 different than the book that existed at the time you were  
8 convicted or the time you were charged, and the guidelines  
9 calculation for drug amounts has gone down. So this is a  
10 two-level benefit that accrues to you. You are better off by  
11 two levels because of changes that have since been made in the  
12 guidelines manual. So instead of it being level 34 based on  
13 the amount of crack and heroin and marijuana, we are instead at  
14 level 32. So the total offense level is 32. No enhancement  
15 for gun in connection with this.

16 MR. KASULIS: Your Honor, the firearms really seem to  
17 be used by the crew for the robberies. I don't recall any  
18 specific testimony on that point.

19 THE COURT: Then we have the illegal firearm  
20 trafficking which is Count Eight, group five. It's a base  
21 offense level of 22 pursuant to Section 5K2.1(a)(3). A  
22 four-level enhancement based on the number of guns, which was  
23 between 8 and 24. Another four-level enhancement because the  
24 defendant engaged in trafficking firearms as that term is  
25 defined under the guidelines. So that is a total offense level



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1 of 30.

2 That means then for group one, we're at 20; group two,  
3 28; group 3 is also 28; group four, 32; and group five, 30. So  
4 the greatest offense level is 32. Zero units for group one;  
5 one unit for group two; I think it's one unit for group three;  
6 and one unit each for groups four and five for a total of four  
7 units. Do you all agree with that?

8 MR. GORDON: Yes.

9 MR. KASULIS: Yes, your Honor.

10 THE COURT: That's four levels.

11 MR. KASULIS: That's correct, your Honor.

12 THE COURT: That then puts us at level 36. 32 plus  
13 four is level 36.

14 With respect to criminal history category, there are  
15 multiple prior convictions that Mr. Washington had. The only  
16 one that counts for purposes of the guidelines are conviction  
17 for a 2005 controlled substance offense that got him 18 months  
18 imprisonment and three points for that.

19 Then another 2005 conviction also for controlled  
20 substances. That got him time served or one criminal history  
21 point.

22 Two more for an October 2005 controlled substance  
23 offense. That's two levels.

24 Another criminal history point for a 2008 controlled  
25 substance offense.

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1           Then another criminal history point for a second  
2           November 2008 conviction for criminal possession of marijuana.

3           A 2009 conviction, also for criminal possession of  
4           marijuana. So he gets another point.

5           So the total number is nine points, which is Criminal  
6           History Category IV.

7           Does everybody agree with that?

8           MR. GORDON: Yes, your Honor.

9           MR. KASULIS: May I just have one moment, your Honor?  
10          I'm sorry.

11          THE COURT: Yes.

12          (Pause)

13          MR. KASULIS: Yes, we agree, your Honor.

14          THE COURT: You agree. That then puts us at level 36.  
15          Criminal History Category IX, which is 292 to 365, correct?  
16          I'm sorry, it's 262 to 327.

17          MR. KASULIS: Yes, that's right, your Honor.

18          THE COURT: Plus a mandatory 60 consecutive as a  
19          result of Count Six. So those are the guidelines, and that's  
20          how they apply in this case. There is a mandatory 20 years on  
21          the narcotics count which is Count Four. I think that's right,  
22          Count Four.

23          MR. KASULIS: I think it is group four, your Honor, I  
24          think it is actually Count Seven.

25          THE COURT: Yes, I'm sorry Seven. Count Four is

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1 irrelevant. So the lowest end I can impose is 25 years by law.  
2 The guidelines range is 262 to 327 plus 60, so basically that's  
3 about 27 to 32 years.

4 MR. GORDON: Just under 27.

5 THE COURT: Yes, approximately. Just in case, putting  
6 it in terms of years helps. So those are the guidelines.

7 Let's then talk about the other factors. Mr. Gordon,  
8 I will hear from you first. Then I will hear from the  
9 government. Then, Mr. Washington, if there is anything you'd  
10 like to say, you certainly have the right to speak. You are  
11 very welcome to. You're not required to, but you'd be welcome  
12 to.

13 Mr. Gordon.

14 MR. GORDON: Your Honor, it seems to me that under all  
15 the circumstances, the mandatory minimum is more than enough.  
16 Your Honor can't sentence any less than that but it seems to me  
17 anything above that would be greater than necessary to meet the  
18 objectives of sentencing.

19 The government offered a plea which was in the range  
20 of ten years. There's a mandatory minimum of only seven, the  
21 guidelines were nine and a half years to just over ten years.  
22 Mr. Washington didn't accept responsibility and went to trial,  
23 but he didn't testify. He didn't commit perjury, and he had  
24 indicated that he would have taken five years, your Honor. I  
25 interpreted that as being that he would have take a sentence --

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1 he would take a plea where the sentence would be five years,  
2 but that's not what was told to the government and that's not  
3 what he said. He said he'd take five years. It seems to me if  
4 a mandatory minimum is five years, he might very well have  
5 taken that too.

6 I'm sure Mr. Freeman did not tell him that it would be  
7 a promise because it's never a promise. So there was no way  
8 there could be a promise of a five year sentence. He showed a  
9 willingness to dispose of this case without a trial.

10 It didn't work out. He went to trial. Two  
11 psychologists said that the reason he didn't take the plea may  
12 very well have been that his serious cognitive impairment  
13 prevented him from realizing just how desperate the situation  
14 was and prevented him from realizing the consequences that  
15 would exist if he went to trial and lost. Two psychologists  
16 said that. Mr. Freeman in his letters to the court indicated  
17 that he believed that Mr. Washington himself didn't get it.

18 The cooperator in this case, I understand he  
19 cooperated and he was rewarded for his cooperation. But his  
20 sentence was five years, and this guy, my understanding is that  
21 he admitted to at least 40 robberies, many that he said he did  
22 not do with Mr. Washington. So he committed many, many more  
23 robberies than Mr. Washington and he got a sentence of five  
24 years in this case. The government thought somewhere in the  
25 ten year range was sufficient.

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1           The mandatory minimum in this case is 25 years in  
2     large part because of a prior felony that Mr. Washington had  
3     from upstate where he was convicted of attempted sale of what I  
4     understand was a couple of bags of, I think it was, cocaine --  
5     a couple bags of cocaine has doubled the mandatory minimum for  
6     the drug offenses in this case.

7           THE COURT: That's true, but that's almost academic at  
8     this point since the guidelines range is above that.

9           MR. GORDON: But the guidelines are advisory, and the  
10    mandatory minimum is not. Mandatory minimum is what it is  
11    irrespective of the nature of a prior felony. The prior felony  
12    could have been a hundred kilos or it could be a couple bags of  
13    coke. In this case, it was a couple bags of coke. I think  
14    that's the difference. There are prior felonies and there are  
15    prior felonies. Even though his prior felony was a lot less  
16    serious, he is now facing a mandatory minimum of 20 years  
17    because of a prior felony, plus the extra five years for the  
18    gun, which I understand.

19           These are crimes that he committed in his twenties.  
20    The longest time he has ever spent in jail was a total of 14  
21    months, part of which was for a violation. I think he was  
22    released after a short period of time, then he violated and  
23    went back. The total amount of time that he served was 14  
24    months. So he's not like somebody who got sentenced to five  
25    years, ten years, and didn't learn is lesson. Maybe he was

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1 treated too leniently in the past, but in fact he was treated  
2 leniently. He never served more than 14 months. I don't think  
3 he needs a sentence greater than 25 years to teach him a lesson  
4 so he won't do it again. He is going to be well, well into his  
5 middle age when he gets released even if your Honor gives him  
6 the minimum sentence that is available.

7 It just seems to me under all the circumstances, a  
8 sentence of 25 years is more than necessary, but your Honor has  
9 to impose that, but I think anything else would be too much.

10 THE COURT: Thank you, Mr. Gordon.

11 Mr. Kasulis or Mr. DiMase?

12 MR. KASULIS: Just a few short points, your Honor. We  
13 know the Court is very familiar with this case, having presided  
14 over the trial and the post trial litigation.

15 Comparing the defendant's prospective sentence, a  
16 guidelines range mandatory minimum sentence, to a cooperating  
17 witness is really apples and oranges. The Court is very  
18 familiar with Mr. Bent's situation. It's entirely different  
19 from Mr. Washington at every phase after the criminal conduct  
20 occurred. They essentially took two different roads in the  
21 woods. That's what factored into the Court's sentence for Mr.  
22 Bent, which was still a custodial sentence of five years.

23 Mr. Washington, even if we were to focus only on the  
24 drug crimes at issue here, moved over two kilograms of crack  
25 cocaine, which is an extraordinarily serious drug, was involved

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1 in trafficking of heroin, and moderate amounts of marijuana,  
2 200 pounds or so that were brought in from California for  
3 distribution.

4 In addition to that, there is the firearms  
5 trafficking. Mr. Washington would go down South to the  
6 Carolinas and bring back guns to essentially sell illegally on  
7 the streets of New York. These included occasionally assault  
8 rifles, tremendously dangerous weapons. That's before we even  
9 begin to consider that Mr. Washington was a pivotal member of a  
10 violent robbery crew that was demonstrated at the trial.

11 These guys were vicious. They would go into  
12 commercial establishments, they would push into people's homes.  
13 They would restrain victims. They would pistol whip victims.  
14 They would hold them at gunpoint. They were essentially  
15 opportunists. Mr. Washington was is the best example of that.  
16 If he could make money selling drugs, he would. If he could  
17 make it stealing drugs, he would. If he could make it robbing  
18 commercial establishments like the Magic Pot, he would. If he  
19 could do it by selling AK-47's in New York, he would.

20 So it is a huge band of criminal conduct here:  
21 significant drug crimes, significant violent crimes and  
22 significant firearms-trafficking guidelines that leads us to  
23 advocate for a guideline sentence in this case, which is two  
24 years or so north of the mandatory minimum. We believe that  
25 the victims require that, the crimes are serious, and that it

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1 is appropriate in this case.

2 THE COURT: Thank you, Mr. Kasulis.

3 Mr. Washington, is there anything you would like to  
4 say before I impose sentence?

5 MR. GORDON: He advises me, your Honor, he has nothing  
6 to say.

7 THE COURT: That is fine. As I said, you have a right  
8 to speak, but you are not required to, and certainly, your  
9 sentence won't be any worse because you chose not to speak. I  
10 think that would be inappropriate.

11 Let me tell you the sentence I intend to impose and my  
12 reasons for it. Once I have finished, I will then check with  
13 the lawyers to make sure I haven't made any errors or done  
14 something illegal. Then assuming I haven't, then I will  
15 formally impose the sentence.

16 Judges in our system have to explain their reasons,  
17 and I think that is a good thing; it is important that a  
18 defendant understands what was going through the judge's mind  
19 and doesn't have to wonder or guess as to what was in the  
20 judge's mind. I think it is also important that the public can  
21 understand what went into the sentencing as well. We have a  
22 court reporter taking all of this down. So it is all part of  
23 the record. Again, I think that is also a good thing. It is a  
24 strength.

25 This is a case that certainly has occupied a lot of my



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1 time, a lot of everyone's time. We have been at this for quite  
2 awhile. I've talked at length at prior sessions about the  
3 responsibility that all of us have -- lawyers and judges -- to  
4 do the right thing, within our own roles, within the  
5 constraints that those roles carry.

6 Mr. Gordon certainly has been a very zealous advocate.  
7 He's worked very hard to make sure that the sentence you  
8 receive is lower than it might otherwise have been. I think he  
9 has been an admirable advocate. I could say the same for  
10 Mr. London, who came into the case in a more limited role. I  
11 could say the same for Mr. Freeman who I thought was very  
12 zealous in his advocacy.

13 The government has a different role. Their role is to  
14 investigate and prosecute serious crimes. That's what they did  
15 here. I think these were incredibly serious crimes. I think  
16 the government is to be commended for investigating and  
17 building a case relating to these crimes. It was important  
18 that they do it. I think they did a good job of it. I thought  
19 they tried the case very well and beautifully in a case that  
20 was important, very important.

21 The government's job is complicated. They have a lot  
22 of different things they need to do that includes plea  
23 discussions plea offers, it also includes decisions about  
24 mandatory minimums in sentencing. We've talked about that. I  
25 have never faulted the government for bringing the charges they

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1 brought. You never know what a jury will do or what they will  
2 come back with; but it did seem to me that when the dust  
3 cleared, and we were confronted with a 52-year mandatory  
4 minimum, which I guess later by subsequent rulings from the  
5 Supreme Court became a 50-year mandatory minimum sentence, that  
6 struck me as extreme. I shared those views with the government  
7 and asked them to consider whether this was the right thing,  
8 because they, like me, and Mr. Gordon, and all lawyers have to  
9 consider what is the right thing.

10 To their credit, they thought long and hard about  
11 that. We have gone back and forth on this quite a bit. I felt  
12 bad actually that some press stories actually sort of  
13 accentuated, I think, the most adversarial exchanges between me  
14 and Mr. Kasulis when it was all done, I thought, very  
15 respectfully. I never accused Mr. Kasulis of being  
16 unprincipled or pig-headed or anything like that. His office  
17 and he have institutional concerns that Mr. Gordon, and I don't  
18 have. And I respect that. I understand that. It just it  
19 seemed to me that on these facts, 50 years mandatory was too  
20 much.

21 They evidently have ultimately agreed, and I commend  
22 them for it. I certainly feel better about going forward today  
23 being freed from the requirement that I impose a 50-year  
24 sentence. So now I have much more discretion, and I get to do  
25 what I consider to be the right thing.

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1           You have heard about all the things, Mr. Washington,  
2           that I have to consider. I have to consider them, and I have  
3           to balance them. That is, frankly, the most important thing I  
4           do. That is the hardest thing I do. It is something I don't  
5           get great joy out of. It is never enjoyable to pass judgment  
6           or to impose a sentence on another human being. It is not  
7           something I look forward to or leave feeling rejuvenated by,  
8           but it is important and I take it seriously. I think the  
9           record over the last many months reflects that.

10           So now I get to focus on the factors I talked about  
11           before. So I look at you, Mr. Washington, and I think, my  
12           goodness, this is a person who has done an awful lot of harm.  
13           And I've talked about the lawyers and struggling to do the  
14           right thing and my struggle to do the right thing in this case.  
15           But I have to say, just looking at everything I see in this  
16           record, it doesn't seem to me that you have worked very hard to  
17           do the right thing at any point.

18           It seems to me that you have been sort of a human  
19           crime wave; that you have been a thug; you have terrorized  
20           people for no good reason; and almost sadistically so. The  
21           robberies that were described at trial, and set forth in less  
22           detail in the presentence report, showed a callousness and a  
23           cruelty that is really troubling. The testimony of the  
24           witnesses at trial conveyed the fear that they were  
25           experiencing, the pain that many of them experienced, and it

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1 showed just the brutality of this conspiracy and the brutality  
2 of you, you seem to be among the most violent of anyone  
3 involved in the robbery conspiracy or the individual robberies.

4           There has to be a penalty for that. But it is not  
5 just that, because these are also robberies of course that  
6 include guns, but we also have gun trafficking. Mr. Kasulis  
7 has touched on this. But these were serious guns that were  
8 capable of inflicting massive amounts of harm. It's hard to  
9 know what harm was that was inflicted by these guns, but  
10 certainly they were capable of immense harm and death.

11           We have drug trafficking of serious drugs -- heroin  
12 and crack -- which destroy lives and families and entire  
13 communities. And all this after you have been repeatedly  
14 prosecuted in the system, repeatedly convicted and sentenced  
15 and just would return right to it.

16           I thought one of the most telling and really troubling  
17 things that I learned during the trial was a recorded call at  
18 the jail at Rikers in which you are discussing, Mr. Washington,  
19 your plans for when you get out. Your plans don't include to  
20 sort of get out of all of this, but rather to inflict some sort  
21 of harm and vengeance on your co-conspirators who didn't help  
22 you post bail and then to engage in kidnapping as a better type  
23 of criminal activity when you get out.

24           So it seems that you were not scaling down. You were  
25 getting ready to scale up. So, look, I'm left with a picture

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1 of somebody who is incredibly dangerous, incredibly violent,  
2 somebody who has not an ounce of remorse. I have to say that a  
3 lengthy sentence is clearly appropriate here. I was balking at  
4 50 years, and I think appropriately so. 50 years is too much.  
5 I think that is wrong, but there is no question you deserve a  
6 lengthy sentence.

7 One of the things I didn't really like about this  
8 being a 50-year mandatory minimum sentence is it almost  
9 converted the defendant, the perpetrator of these crimes, into  
10 a victim, which I think is very unfortunate. So now I think  
11 because of the government's decision, wise decision in my view,  
12 to withdraw, to dismiss the second 924(c) count, it seems to me  
13 that any argument Mr. Washington is a victim goes away.

14 So I never intended to sentence Mr. Washington to  
15 anything less than 20 years. This was way back when, once I  
16 became aware of the general nature of his conduct. Everything  
17 I saw at trial persuades me that a longer sentence is  
18 appropriate. The mandatory minimum sentence here is 25 years.  
19 That's a lengthy sentence; no question about it. But the  
20 guidelines are higher than that. And I don't think the  
21 guidelines have it wrong here. I don't.

22 So the sentence I intend to impose is a guideline  
23 sentence. I intend to sentence Mr. Washington to 22 years on  
24 Counts One through Four, Seven and Eight to run concurrent, to  
25 be followed by a consecutive mandatory consecutive term of 60

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1 months or five years on Count Six. That's a total of 27 years.  
2 That's almost as long as Mr. Washington has been alive. I just  
3 think the amount of harm and damage inflicted by Mr. Washington  
4 in his short life merits a sentence of that kind.

5 That's the sentence I intend to impose. Is there any  
6 legal impediment to my imposing it, Mr. Kasulis?

7 MR. KASULIS: Perhaps a quite technical one, your  
8 Honor. The statutory maximum on the substantive robbery on the  
9 robbery conspiracy is 20 years. When your Honor said that you  
10 intend to impose 22 years on Counts One through Four, Seven and  
11 Eight, I think it can only as a technical matter be 20 on the  
12 1951 counts.

13 THE COURT: I will be clear about this. It will be  
14 concurrent up to 22 years on the lengthy yes, sir count think  
15 is Count Seven, but all of those do run concurrent, so I will  
16 make that clear in a moment. But, thank you, that is the  
17 correct catch.

18 Mr. Gordon?

19 MR. GORDON: Nothing from me.

20 THE COURT: Mr. Washington, let me ask you to stand.

21 Mr. Washington, having presided over your trial and  
22 being present when the jury returned guilty verdicts on each of  
23 the eight counts of the indictment, now it's seven counts of  
24 conviction because one has been dismissed by the government,  
25 but I sentence you as follows:

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1 I sentence you to a term of 20 years on Counts One  
2 through Four, 22 years on Count Seven, and the maximum on Count  
3 Eight I think, is five, so five years on Count Eight for a  
4 total of 22 years, all to run concurrent.

5 In addition, I will impose a 60-month or five year  
6 mandatory consecutive sentence on Count Six. So that will run  
7 after you have finished serving the terms on Counts One through  
8 Four, Seven and Eight. That is the prison term.

9 With respect to supervised release, I will impose a  
10 term of supervised release of life on Count Seven, three years  
11 each on Counts One through Four, Eight, and I guess also Six,  
12 all to run concurrent.

13 I am not going to impose a fine. I don't know that  
14 there is any point because it appears Mr. Washington doesn't  
15 have the ability to pay a fine.

16 The government is not seeking restitution at this  
17 point?

18 MR. KASULIS: Your Honor, we looked into that. The  
19 four independent robberies is a robbery of drug proceeds and  
20 cannot be a basis for restitution. There was no real taking in  
21 the Bronx Park/South Bronx where the only thing that was stolen  
22 was a cell phone.

23 With regard to Magic Pot the individual victims, the  
24 customers lost a de minimus amount of money. The institution,  
25 the Magic Pot, itself lost funds. However, our attempts to

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1 interface to contact the former owner of the Magic Pot have  
2 failed. He didn't return any calls from the agency. The Magic  
3 Pot closed shortly after robbery.

4 THE COURT: And then forfeiture?

5 MR. KASULIS: We're not seeking forfeiture.

6 THE COURT: I won't impose restitution or forfeiture.  
7 No fine either. I will impose a special assessment of \$700;  
8 that is, \$100 for each count of conviction.

9 With regard to supervised release, there are terms and  
10 conditions associated with it, so I should tell you what these  
11 are. There are standard conditions, 13 in all, that are  
12 imposed in virtually every case involving supervised release.  
13 I will impose those.

14 I will also impose the following mandatory conditions:  
15 First, that you will not commit another federal, state or local  
16 crime.

17 Second, that you will not illegally possess a  
18 controlled substance of any kind.

19 Third, you will not possess a firearm or destructive  
20 device of any kind.

21 Fourth, you will participate in the collection of DNA  
22 as directed by the probation officer.

23 In addition, there are special conditions that I am  
24 going to impose. One is that you will participate in a  
25 vocational, educational training course as approved by the



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1 probation office.

2           The second is that you will participate in a substance  
3 abuse treatment program approved bite probation office. That  
4 program will include testing to determine if you have reverted  
5 to the use of drugs or alcohol. I will also authorize the  
6 probation office to receive evaluations and the results of drug  
7 tests from the treatment provider. I will also authorize  
8 probation to share probation's tests and evaluations with the  
9 treatment provider as necessary.

10           I will order that to the extent you are able to help  
11 defray the cost of that program, Mr. Washington, either because  
12 you are working or you have access to insurance, I will order  
13 that you do help to defray the cost of that program. To the  
14 extent you can't afford to pay or defray the cost of the  
15 program, then the court will bear the cost because I think it  
16 is important that you participate in that program.

17           I am also going to order that you participate in a  
18 mental health treatment program. To the extent it can be  
19 combined with the substance abuse treatment program, I think  
20 that would be fine. Otherwise, if it needs to be a separate  
21 program, then that will be the case because I think that is  
22 important also with the same conditions that you contribute to  
23 the cost of that program if you are able to.

24           Finally, you shall submit your person, your residence,  
25 your place of business, your vehicle, or any other premises

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1 under your control to a search in the event that the probation  
2 officer believes that there is evidence of contraband or  
3 evidence of a violation or a crime that could be found in those  
4 premises.

5 You have an obligation to consent to that search if  
6 requested. The request will be made in a reasonable manner and  
7 the search will take place at a reasonable time and in a  
8 reasonable manner. You will also have to let anybody with whom  
9 you share these premises know that you are subject to a search.  
10 If you are living with other people, you have to tell them "I  
11 am subject to search requirement as part of my supervised  
12 release."

13 I will direct that you be supervised in the district  
14 of your residence. I will direct you report to probation  
15 within 24 hours of your release from custody, unless the next  
16 day is a weekend or a holiday, then appear the next business  
17 day.

18 As I said, I am not going to impose a fine. I am not  
19 going to order restitution or forfeiture.

20 I will order a special assessment of \$700.

21 Are there open counts?

22 MR. KASULIS: Yes. We move to dismiss them, your  
23 Honor.

24 THE COURT: I will dismiss any open counts.

25 I should tell you, Mr. Washington -- I think you

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1 probably understand this already -- you have a right to appeal  
2 this sentence and the jury's verdict. If you wish to appeal,  
3 you would need to file a notice of appeal within two weeks. I  
4 guess two weeks from tomorrow is when I will get the judgment  
5 out. That's a pretty strict deadline. It doesn't mean the  
6 brief has to be in by then, but you have to file a notice of  
7 appeal by then.

8 MR. GORDON: I will do so, your Honor.

9 THE COURT: Talk to Mr. Gordon. He will assist you  
10 with that. The fee associated with this will be waived because  
11 you can't afford to pay the fee, so you needn't worry about  
12 that.

13 MR. GORDON: Two matters, your Honor:

14 One, is will you recommend to the Bureau of Prisons  
15 that he be designated to a facility close to New York so his  
16 family can visit him?

17 THE COURT: I will make that recommendation, yes.

18 MR. GORDON: The other, your Honor, is if you look at  
19 paragraph 109 on page 18, it reflects a state arrest on  
20 February 23, 2011. That was the arrest resulting from the  
21 search that was done which your Honor heard lots of evidence  
22 about, and that was the motion to suppress that Mr. Freeman  
23 brought. He spent from February 23, 2011 in state custody  
24 state in detention in the state until he was brought over here  
25 on June 15, 2011. That four-month period, since no charges

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1 were dismissed, it was not applied to any state sentence, I  
2 would ask your Honor either give him credit for that time  
3 towards his sentence, or if your Honor can't do that, if you  
4 would recommend to the Bureau of Prisons that they do it  
5 because the facts of that case were certainly part of this  
6 case.

7 THE COURT: It's not clear to me from the probation  
8 report whether that's true.

9 MR. GORDON: I think the government will acknowledge  
10 that that is the case.

11 THE COURT: Is that right?

12 MR. KASULIS: I believe that's true, your Honor. We  
13 have no objection to your recommending to the Bureau of Prisons  
14 that they include that in their calculation.

15 THE COURT: Again, there is not much I can see from  
16 the presentence report as to whether it's the same offense or  
17 not. If the parties agree to that, and there is no dispute --

18 MR. GORDON: If you read paragraph 110, it talks about  
19 two firearms, crack cocaine and marijuana was seized. It was  
20 the same search.

21 THE COURT: I have no reason to doubt you, but it is  
22 not clear from the presentence report given the number of other  
23 arrests and the nature of those arrests, that the mere fact  
24 that they both involve two firearms, crack cocaine and  
25 marijuana would seem to put this in very select company, but

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1 since there is no dispute, then I will make the recommendation.

2 MR. GORDON: Thank you.

3 THE COURT: Is there anything else we should cover  
4 today?

5 MR. KASULIS: Not from the government, your Honor.

6 THE COURT: All right. Mr. Gordon, anything else?

7 MR. GORDON: Nothing.

8 THE COURT: Let me thank Mr. Gordon. Let me thank  
9 Mr. London. Let me thank also the court reporter and the  
10 marshals for being here today.

11 Let me thank the government for considering the  
12 various arguments I made. This was a rare case, and it's a  
13 case that I think merited an examination of the sentence and of  
14 mandatory minimums and how we got there and as to how we might  
15 proceed. I think it is good that everybody involved in this  
16 system take a hard look at those things from time to time in  
17 special cases. So I think what happened here was a good thing.  
18 It, I think, enhances the reputation of the institution and  
19 ultimately that is also something that is of importance to  
20 everybody, everybody who participates in it, whether a lawyer a  
21 judge or as a defendant or in any capacity. So I was gratified  
22 by that.

23 So thank you. OK? Good luck to you all.

24 Mr. Washington, good luck to you. That's a lengthy  
25 sentence. It's not lost on me. I do think that you are a

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1 young man, so you will serve the sentence, and you will  
2 eventually be back out. My hope for you is that this will all  
3 be behind you, and you will then lead a life that is peaceful,  
4 productive and happy. I think you deserve that. So that is my  
5 hope for you. But certainly the crimes committed were  
6 incredibly serious and the people who were the victims of those  
7 crimes, I think are likely still dealing with some of the harms  
8 you inflicted, so you should think about that too.

9 Thank you all. Have a good day.

10 (Adjourned)